

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN F. STREMPLE,)	
)	
Plaintiff,)	Civil Action No. 01-890
)	Chief U.S. Magistrate Judge
)	Caiazza ¹
v.)	
)	
R. JAMES NICHOLSON ² ,)	
SECRETARY OF THE DEPARTMENT)	
OF VETERANS AFFAIRS,)	
)	
Defendant.)	

ORDER

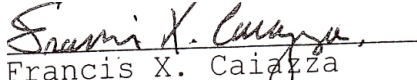
The Defendant's Motion to Preclude Evidence (Doc. 72) is DENIED. The Plaintiff may use his non-selection for the Surgical Specialty Care Service Product Line Manager position in May 1997 as "background evidence" of his timely-filed claims. See, e.g., Gaul v. ZEP Mfg. Co., 2004 WL 231298, *4 (E.D. Pa. Feb. 5, 2004) ("[A]n employee is not barred from using prior acts as background evidence in support of a timely claim[.]") (citing National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002)). The Defendant's exhaustion argument is unpersuasive. See, e.g., Holman v. Trammell Crow Co., 2005 WL 289936, *4 (E.D. Pa. Feb. 3, 2005) ("The Third Circuit Court has cautioned against reading a

¹ On February 20, 2004, District Court Judge Arthur J. Schwab referred this case to the undersigned, based on the parties' consent, "to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73." See Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference (Doc. 41).

² R. James Nicholson ("Nicholson") replaced Anthony Principi as Secretary of the Department of Veterans Affairs on February 1, 2005. Pursuant to Federal Rule of Civil Procedure 25(d)(1), Nicholson is automatically substituted as the Defendant in this action.

plaintiff's EEOC charge too narrowly . . . the scope of the original charge should be liberally construed.") (citations and internal quotations omitted).

August 24, 2005


Francis X. Caiazza
U.S. Magistrate Judge

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